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B U L L E T I N

NO. 82 - 2

March 10, 1982

Subject: TWO ITEMS RELATING TO THE UNFAIR CLAIMS SETTLEMENT
PRACTICES REGULATION

Item 1. Duty to Settle Third Party Property Damage Claims.

What is an insurer's obligation when it is dealing with a third-party claimant who has a claim for property damage and for bodily injury? Typically, the claimant wants his car repaired, but is still under treatment for his personal injury and is not prepared to settle that aspect of his claim. Is the insurance company obligated to settle the property damage portion of the claim with the third-party claimant?

At least three sections of the Unfair Claims Settlement Practices Regulation are pertinent. Pursuant to WAC 284-30-330, the following are unfair or deceptive acts or practices:

(6) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear.

(12) Failing to promptly settle claims where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

Under WAC 284-30-390, which sets forth standards with respect to claims relating to motorcycles and private passenger automobiles, subsection (2) provides:

Where liability and damages are reasonably clear, insurers shall not recommend that third party claimants make claim under their own policies solely to avoid paying claims under such insurer's insurance policy or insurance contract.

We think these sections make it clear that an insurer has an obligation to make a good faith effort to settle the property damage portion of a third party's claim where liability has become reasonably clear, even though the claim for bodily injury is not then ready for settlement. An appropriate test would be whether, in the absence of the personal injury, the property damage claim would be paid. If it would be, then it should be.

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Item 2. Duty to Fully Disclose All Pertinent Benefits and Coverages to First Party Claimants.

It has come to our attention that some insurers are not treating their own insureds fairly and are not meeting the standards of conduct we expect.

WAC 284-30-350(1) provides:

No insurer shall fail to fully disclose to first party claimants all pertinent benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented.

In one instance an insurer correctly advised its insured that there was no coverage for damage to a borrowed car that was struck while legally parked, either under the liability or collision sections of the policy. It failed to disclose, however, that the claim could be covered under its underinsured motorist property damage provision.

In another instance, under a homeowners policy, the company correctly advised that certain non-owned property damaged by the insured was excluded under the Personal Property Coverage and not covered under the Personal Liability Coverage, but failed to disclose that the "Additional Coverages" section provided up to \$250 per occurrence for the damage to the property.

These are examples of a failure to make the full disclosure required by the rule. An insurance company is expected to have competent representatives sufficiently trained to recognize all of the benefits and coverages available under a policy in a given situation. Insureds should be able to trust and rely upon their own companies to guide them through proper settlements that fully bestow all the benefits available under the policy. The insurer and the insured are not in adversarial positions. The most uninformed insureds should receive exactly what they are entitled to, regardless of their confusion or lack of knowledge. This puts a severe burden upon insurance companies and requires the highest ethical conduct on the part of their employees and representatives. That is the result, however, of being part of a business that is affected by the public interest, and which is subject to the statutory requirement that "all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters." RCW 48.01.030. It is a distinction of the business of insurance that must always be observed and, fortunately, usually is.

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Insurance Commissioner